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APPLICATION NO.	FILING DATE	FIRST NAMED INVENTOR	ATTORNEY DOCKET NO.	CONFIRMATION NO.
09/676,620	10/02/2000	Francis Lawrence Richter	163.1406US01	3125

23552 7590 03/27/2002

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MINNEAPOLIS, MN 55402-0903

EXAMINER
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DELACROIX MUIRHEI, CYBILLE

ART UNIT	PAPER NUMBER
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1614

DATE MAILED: 03/27/2002

7

Please find below and/or attached an Office communication concerning this application or proceeding.

## Office Action Summary

Application N .

09/676,620

Applicant(s)

RICHTER ET AL.

Examiner

Cybille Delacroix-Muirheid

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-- The MAILING DATE of this communication appears on the cover sheet with the correspondence address --

### Period for Reply

A SHORTENED STATUTORY PERIOD FOR REPLY IS SET TO EXPIRE 3 MONTH(S) FROM THE MAILING DATE OF THIS COMMUNICATION.

- Extensions of time may be available under the provisions of 37 CFR 1.136(a). In no event, however, may a reply be timely filed after SIX (6) MONTHS from the mailing date of this communication.
- If the period for reply specified above is less than thirty (30) days, a reply within the statutory minimum of thirty (30) days will be considered timely.
- If NO period for reply is specified above, the maximum statutory period will apply and will expire SIX (6) MONTHS from the mailing date of this communication.
- Failure to reply within the set or extended period for reply will, by statute, cause the application to become ABANDONED (35 U.S.C. § 133).
- Any reply received by the Office later than three months after the mailing date of this communication, even if timely filed, may reduce any earned patent term adjustment. See 37 CFR 1.704(b).

### Status

- 1) ☒ Responsive to communication(s) filed on 10 January 2002.
- 2a) ☒ This action is **FINAL**. 2b) ☐ This action is non-final.
- 3) ☐ Since this application is in condition for allowance except for formal matters, prosecution as to the merits is closed in accordance with the practice under *Ex parte Quayle*, 1935 C.D. 11, 453 O.G. 213.

### Disposition of Claims

- 4) ☒ Claim(s) 1-37 is/are pending in the application.
- 4a) Of the above claim(s) \_\_\_\_\_ is/are withdrawn from consideration.
- 5) ☐ Claim(s) \_\_\_\_\_ is/are allowed.
- 6) ☒ Claim(s) 1-37 is/are rejected.
- 7) ☐ Claim(s) \_\_\_\_\_ is/are objected to.
- 8) ☐ Claim(s) \_\_\_\_\_ are subject to restriction and/or election requirement.

### Application Papers

- 9) ☐ The specification is objected to by the Examiner.
- 10) ☐ The drawing(s) filed on \_\_\_\_\_ is/are: a) ☐ accepted or b) ☐ objected to by the Examiner.
- Applicant may not request that any objection to the drawing(s) be held in abeyance. See 37 CFR 1.85(a).
- 11) ☐ The proposed drawing correction filed on \_\_\_\_\_ is: a) ☐ approved b) ☐ disapproved by the Examiner.
- If approved, corrected drawings are required in reply to this Office action.
- 12) ☐ The oath or declaration is objected to by the Examiner.

### Priority under 35 U.S.C. §§ 119 and 120

- 13) ☐ Acknowledgment is made of a claim for foreign priority under 35 U.S.C. § 119(a)-(d) or (f).
- a) ☐ All b) ☐ Some \* c) ☐ None of:
- ☐ Certified copies of the priority documents have been received.
  - ☐ Certified copies of the priority documents have been received in Application No. \_\_\_\_\_.
  - ☐ Copies of the certified copies of the priority documents have been received in this National Stage application from the International Bureau (PCT Rule 17.2(a)).
- \* See the attached detailed Office action for a list of the certified copies not received.
- 14) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. § 119(e) (to a provisional application).
- a) ☐ The translation of the foreign language provisional application has been received.
- 15) ☐ Acknowledgment is made of a claim for domestic priority under 35 U.S.C. §§ 120 and/or 121.

### Attachment(s)

- 1) ☐ Notice of References Cited (PTO-892)
- 2) ☐ Notice of Draftsperson's Patent Drawing Review (PTO-948)
- 3) ☐ Information Disclosure Statement(s) (PTO-1449) Paper No(s) \_\_\_\_\_.
- 4) ☐ Interview Summary (PTO-413) Paper No(s). \_\_\_\_\_.
- 5) ☐ Notice of Informal Patent Application (PTO-152)
- 6) ☐ Other: \_\_\_\_\_.

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### **DETAILED ACTION**

1. Claim 18 is rejected under 35 U.S.C. 102(b) as being anticipated by Lucas et al., 4,410,442.
2. Claims 1-17, 19-37 are rejected under 35 U.S.C. 103(a) as being unpatentable over Andrews 5,569,461 in view of Richter et al., 5,234,719.

The text of those sections of Title 35, U.S. Code not included in this action can be found in a prior Office action.

### ***Response to Amendment***

The following is responsive to Applicant's amendment received Jan. 10, 2002.

No claims are cancelled. No new claims are added. Claims 1-37 are currently pending.

The previous claims objection set forth in paragraph 1 of the office action mailed Oct. 11, 2001 **is withdrawn** in view of Applicant's amendment and the remarks contained therein.

However, Applicant's argument traversing (1) the previous claim rejection under 35 USC 102(b) (set forth in paragraphs 2-3 of the office action mailed Oct. 11, 2001); and (2) the previous claims rejection under 35 USC 103(a) (set forth in paragraphs 4-6 of the office action mailed Oct. 11, 2001) have been considered but are not found to be persuasive.

Said rejections are maintained essentially for the reasons given previously in the office action mailed Oct. 11, 2001 with the following additional comment:

***Claim(s) Rejection under 35 USC 102(b):***

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It is essentially Applicant's position that claim 18, as amended, recites "consisting essentially of" language and therefore excludes the additional agents disclosed in the disinfecting solutions of Lucas et al., namely the water soluble salts and the calcium chelators.

Said argument has been considered but is , respectfully, not persuasive.

Concerning the Lucas et al. reference and Applicant's argument that the additional components in the composition of Lucas are excluded by the claims which now recite "consisting essentially of" language, The transitional phrase "consisting essentially of" limits the scope of a claim to the specified materials or steps "and those that do not materially affect the basic and novel characteristic(s)" of the claimed invention. In re Herz, 537 F.2d 549, 551-52, 190 USPQ 461, 463 (CCPA 1976). When an applicant contends that additional steps or materials in the prior art are excluded by the recitation of "consisting essentially of," applicant has the burden of showing that the introduction of additional steps or components would materially change the characteristics of applicant's invention. In re De Lajarte, 337 F.2d 870, 143 USPQ 256 (CCPA 1964). See also Ex parte Hoffman, 12 USPQ2d 1061, 1063-64 (Bd. Pat. App. & Inter. 1989). See MPEP 2111.03. In this case, Applicant has not clearly showed how the additional agents described by Lucas would materially affect the basic and novel characteristics of Applicant's composition.

It is for these reasons the rejection is maintained.

***Claim(s) Rejection under 35 USC 103(a):***

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First, please note that the Kabara et al. reference is withdrawn from the rejection in view of Applicant's remarks.

Second, it is essentially Applicant's position that the prior art does not disclose Applicant's claimed composition wherein the freezing point depressant is greater than 60 wt. % of the composition. Applicant additionally argues that the Andrews reference does not disclose adding a freezing point depressant. Furthermore, it would have not been obvious to one of ordinary skill in the art to combine the Richter patent with the Andrews patent because Richter is directed toward a sanitizing composition whereas the composition of Andrews is a disinfecting/antiseptic composition.

Said arguments have been considered but are not found to be persuasive.

It is the Examiner position that Andrews does disclose a freezing point depressant because Andrews discloses the use of propylene glycol in the disclosed antimicrobial compositions, which is the same compound that Applicant is claiming. Furthermore, Andrews discloses Applicant's claimed range of freezing point depressant, i.e. propylene glycol in the range of 5-80 wt. %. Moreover, Applicant's arguments with respect to the Richter patent are acknowledged; however, the Examiner relies upon the Richter patent for the teaching of a component which may be used to contain various constituents in solution over various temperature ranges, wherein said component may comprise propylene glycol esters. The Examiner maintains that it would have been obvious to one of ordinary skill in the art to modify the compositions and methods of Andrews to include the components of Richter et al. because one of ordinary skill in the art

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would reasonably expect the resulting compositions to remain stable and effective over various temperatures. Furthermore, maintaining such antimicrobial compositions at a stable phase in cold temperatures appears to be recognized by Richter and one of ordinary skill in the art would be motivated to include freezing point depressants in the antimicrobial compositions. Finally, the claimed freezing point temperatures/freezing point depressant properties would be obvious in the compositions of Andrews since Andrews discloses compositions containing propylene glycol at Applicant's claimed ranges.

It is for these reasons that the rejection is maintained.

### ***Conclusion***

3. **THIS ACTION IS MADE FINAL.** Applicant is reminded of the extension of time policy as set forth in 37 CFR 1.136(a).

A shortened statutory period for reply to this final action is set to expire THREE MONTHS from the mailing date of this action. In the event a first reply is filed within TWO MONTHS of the mailing date of this final action and the advisory action is not mailed until after the end of the THREE-MONTH shortened statutory period, then the shortened statutory period will expire on the date the advisory action is mailed, and any extension fee pursuant to 37 CFR 1.136(a) will be calculated from the mailing date of the advisory action. In no event, however, will the statutory period for reply expire later than SIX MONTHS from the mailing date of this final action.

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Any inquiry concerning this communication or earlier communications from the examiner should be directed to Cybille Delacroix-Muirheid whose telephone number is (703) 306-3227. The examiner can normally be reached on Tue-Fri from 8:30 to 6:00. The examiner can also be reached on alternate Mondays.


If attempts to reach the examiner by telephone are unsuccessful, the examiner's supervisor, Marianne Seidel, can be reached on (703) 308-4725. The fax phone number for this Group is (703) 308-4242.

Any inquiry of a general nature or relating to the status of this application or proceeding should be directed to the Group receptionist whose telephone number is (703) 308-1235.

CDM



March 24, 2002

  
**WAYNE C. JONES**  
**PRIMARY EXAMINER**